

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:
THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL
CATALOGUES IN THE 21ST CENTURY**

**QUESTIONNAIRE FOR THE XVIIIth CONGRESS
OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS**

**I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS**

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

According to Article 12 of the Constitution of the Republic of Azerbaijan, human and citizens' rights and freedoms enshrined in the Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party.

In paragraph II of Article 148 of the Constitution noted that, international treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan.

According to Article 151 of the Constitution if a conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the international treaties shall apply.

In accordance with the National Action Plan on the Protection of Human Rights in the Republic of Azerbaijan, approved by the Order of the President of the Republic of Azerbaijan on December 28, 2006, it has been recommended the Constitutional Court and the Supreme Court of the Republic of Azerbaijan apply the provisions of international documents regulating the protection of human rights.

The relevant amendments to the Code of Civil Procedure and the Code of Criminal Procedure of June 11, 2004 set out the procedure for reviewing civil and criminal justice cases, as well as the possibility of reviewing new cases in accordance with the judgements of the European Court of Human Rights. (Law of the Republic of Azerbaijan "On amendments and additions to legislative acts", No. 688-II-QD)

Law on Rules of conclusion, execution and denunciation of international treaties of the Republic of Azerbaijan, dated 13 June 1995 defines the procedures relevant to implementation of the provisions of international law.

This Law, in accordance with the Constitution of the Republic of Azerbaijan, universally recognized principles and norms of international law, defines the rules for conclusion, execution and abolition of all written international treaties (treaty, agreement, convention, covenant, protocol, exchange of letters or notes and other international treaties) of the Republic of Azerbaijan, regardless of its name. The international agreement of the Republic of Azerbaijan, irrespective of its name, is a written agreement of the Republic of Azerbaijan with foreign states and international organizations in the manner prescribed by this Law. The Republic of Azerbaijan may express its consent to the binding of international treaties through the signing of the agreement, the exchange of documents constituting the agreement, ratification, approval of the contract, accession and any other means stipulated by the parties to the agreement.

For the declaring of human and civil rights and freedoms, the Constitution of the Republic of Azerbaijan complies with all requirements of international legal standards of

the Universal Declaration of Human Rights of 1948, Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, International Covenant on Economic, Social and Cultural Rights of 1966, International Covenant on Civil and Political Rights of 1966, Optional Protocol to the International Covenant on Civil and Political Rights of 1966, including the Helsinki Final Act of the Conference on Security and Co-operation in Europe of 1975.

In some cases, the Constitutional Court, declaring its legal position, used the international treaties based on the 1966 International Covenants, as well as other arguments to substantiate their legal position and to clarify the contents of the relevant constitutional principle.

It should be mentioned that the articles of the European Convention on Human Rights were the basis to the final part of three decisions adopted by the Constitutional Court, along with the constitutional norm. These are:

The Constitutional Court of the Republic of Azerbaijan adopted a relevant decision "On interpretation of certain provisions of Article 158.3, Articles 158.4 and 290.3 of the Code of the Criminal Procedure of the Republic of Azerbaijan", dated October 10, 2011.

The decision stated that under Article 28 of the Constitution everyone has the right to liberty. The right to liberty can only be restricted by law, arrest or imprisonment.

The recognition of human dignity as a social value by the state ensures that everyone's right to arbitrary interference is unacceptable and creates conditions for the full development of the individual and the democratic organization of society.

Article 1 of the Universal Declaration of Human Rights provides that all are born free and equal in dignity and rights. The right of every person to freedom and inviolability is the fundamental natural right that belongs to him upon his birth. The limitation of these rights, without any legal basis or necessity, is unacceptable.

According to Article 5 § 1 (c) of the Convention, the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the Convention intend the "right to trial within a reasonable time". According to Article 6 § 1 of the Convention, everyone is entitled to a fair and public hearing within a reasonable time, in the determination of civil rights and obligations or of any criminal charge against him.

The Constitutional Court decided that Article 158.4 of the Code of the Criminal Procedure of the Republic of Azerbaijan, as well as Article 218.4 of that Code, the time limit for familiarization of the accused and his defense lawyer with the materials of the criminal case is not the subject of the Constitution of the Republic of Azerbaijan. It has been considered invalid from March 1, 2012 because it does not comply with Article 28 and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitutional Court adopted a relevant decision "On verification of the compliance of the Decision of June 8, 2011 of the Civil Chamber of the Supreme Court of the Republic of Azerbaijan with the Constitution and laws of the Republic of Azerbaijan in the civil proceedings in the claim of Mr. R. Jafarov", dated May 18, 2012".

The decision states that the doctrine of the constitutional law recognizes the principle of legal certainty as one of the key elements of the law, which is reflected in the Constitution's preamble.

The principle of legal certainty provides, among other requirements, clarity and certainty regarding the current legal situation (Decision of the Plenum of the Constitutional Court “On Article 228.5 of the Civil Code of the Republic of Azerbaijan”, dated May 27, 2008).

The inevitable inaccuracies or ambiguities of legal norms are often overcome by judicial practice. From the point of view of Article 19 of the Convention for the legal position expressed in the judgment of the European Court of Human Rights in *Scordino v. Italy*, (no. 1), the purpose of this Court is to verify whether the interpretation and application of domestic law is consistent with the principles of the Convention consists of. The Plenum of the Constitutional Court stated that the interpretation and application of domestic law by the Court of Cassation should be consistent with the provisions of the Constitution and the law. Thus, the judicial practice in any case must be consistent with the purpose and essence of the applicable legal norm, its meaning should not be distorted, and the practice of application in such a way that it does not violate the human rights and freedoms enshrined in the Constitution.

The Constitutional Court came to conclusion that it should be recommended to the Milli Majlis of the Republic of Azerbaijan to improve the provisions of the legislation concerning the social security of prosecutors, as well as judges from the point of view of the Chapter VII of the Constitution, as well as Article 14 of the Convention. The decision of the Civil Chamber of the Supreme Court of June 8, 2011 in the civil case in the claim of Mr. R. Jafarov should be found to be inconsistent with Article 60 of the Constitution, as well as Article 32.5 of the Law “On service in the Prosecutor's Office” and Article 9.4.1 of the Law “On Labour Pensions” and the case must be reconsidered according to the present decision, in order and the terms established by the civil procedure legislation of the Republic of Azerbaijan.

The Constitutional Court adopted the relevant decision “On interpretation of Article 28 of the Code of the Administrative Procedure of the Republic of Azerbaijan”, dated April 12, 2014.

The decision states that it is necessary to analyze the principle of stability of judicial decisions, which is an integral part of legal certainty with the right to appeal to the court arising from Article 60 of the Constitution of the Republic of Azerbaijan.

Paragraph I of Article 60 of the Constitution guarantees that everyone is guaranteed protection of his/her rights and liberties through the administrative remedies and in court. According to paragraphs VI and VII of Article 71 of the Constitution, human and citizens' rights and freedoms shall have direct effect on the territory of the Republic of Azerbaijan. Disputes related to violation of human and citizens' rights and freedoms shall be resolved by courts of law.

Paragraph I of Article 125 of the Constitution provides that judicial power in the Republic of Azerbaijan shall be exercised by the courts of law, through the administration of justice. The Court ruled that a person who was not involved in an administrative proceeding, whose interests were affected by a court decision came from paragraph I of Article 60 of the Constitution of the Republic of Azerbaijan and Article 6 of the Convention for the Protection of Human Rights and Freedoms should be advised to the Milli Majlis of the Republic of Azerbaijan.

To ensure the right of access to court provided in paragraph I of Article 60 of the Constitution of the Republic of Azerbaijan and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, until the matter is resolved in the law, in cases of gross violations of rights and lawful interests of an individual who has not been involved in the administrative proceedings but whose interests have been affected by the final judicial act, he may be invited to join the administrative proceedings

as third party. Such liability should be in accordance with Article 28.1 of the Code of Administrative Procedure of the Republic of Azerbaijan, with due regard to the legal views expressed in the descriptive and reasoning part of this Decision.

I.II Supranational catalogues of human rights (the Charter)

The Republic of Azerbaijan is not a member of the European Union and has not joined the Charter of Fundamental Rights of the EU.

I.III National human rights catalogues

The Constitution of the Republic of Azerbaijan establishes that protection of human rights is one of the priority tasks of the state. According to paragraph I of Article 12 of the Constitution of the Republic of Azerbaijan, the highest objective of the State is to ensure human and citizens' rights and freedoms a proper standard of living for the citizens of the Republic of Azerbaijan. One of the basic principles and features of law-governed state is human and citizens' rights and freedoms.

Taking into consideration the current trends in human rights and freedoms, the Constitution of the Republic of Azerbaijan has broadly defined human and citizens' rights and freedoms, as well as mechanisms for their realization. The third chapter of the Constitution, which is devoted to the human and citizens' fundamental rights and freedoms, provides for the rights and freedoms that are necessary in a democratic state governed by Rule of Law, the mechanisms of their realization and the admissible limits of lawful restriction of specific rights, in accordance with international standards.

Thus, Article 155 of the Constitution provides limits on initiative to propose amendments to the Constitution of the Republic of Azerbaijan.

Cancellation or abolition of Articles 1, 2, 6, 7, 8 and 21 of the present Constitution of the Republic of Azerbaijan Proposals for more restrictions than those stipulated by the international treaties to which it is issued may not be submitted for referendum.

During the drafting of the Constitution, many years of experience of humanity formed over a long period of time, the experience of the constitutionalism of developed countries has been used.

In order to bring the Constitution in line with the demands of the time, the various content changes in the society, the text of the Constitution provides the procedure of making amendments and additions to the Constitution.

Amendments and additions were made to the Constitution of the Republic of Azerbaijan by referendum in 2009 and 2016. These are as follows:

1. Basic Principles of Human and Citizens' Rights and Freedoms (Article 24)

Human dignity is protected and respected (24.1).

Abuse of rights is not allowed (24.3)

2. Right to equality (Article 25)

No one may be harmed, granted advantages or privileges, or refused to be granted advantages and privileges on the grounds laid down in paragraph III of the Article (Article 25.4)

Everyone shall be guaranteed equal rights in any proceeding before state authorities and bearers of public authority that decide upon his/her rights and duties (Article 25.5)

Persons with impaired health are entitled to all rights and carry all duties enshrined in this Constitution, except in cases when enjoyment of rights and performance of duties is impeded by their limited abilities (Article 25.6)

3. Right to property (Article 29)

Private property shall entail social responsibility (Article 29.5)

Land ownership may be restricted by law for social justice and the purposes of efficient use of the land (Article 29.6)

4. Right to live in a healthy environment (Article 39)

No one may cause threat or damage to the environment and natural resources beyond the limits prescribed by law (Article 39.3)

The state guarantees the preservation of ecological balance and protection of the species of wild plants and wild animals prescribed by law (Article 39.4)

5. Freedom of Conscience (Article 48)

No one shall be forced to express (or demonstrate) his/her religious faith and belief, to perform religious rituals or participate in religious ceremonies. (Article 48.5)

6. Freedom of Information (Article 50)

Everyone's right to refute or reply to the information published in mass media and violating his/her rights or damaging his/ her interests shall be guaranteed (Article 50.3)

7. Guarantee of the right to citizenship (Article 53)

A citizen of the Republic of Azerbaijan may not be deprived of the citizenship of the Republic of Azerbaijan (except for cases of its loss prescribed by law) (Article 53.1)

8. Right to Appeal (Article 57)

Citizens of the Republic of Azerbaijan have the right to personally address and to submit individual and collective written applications to state bodies. Military servants may enjoy this right only on an individual basis. Each application shall receive a written response in accordance with the procedure and within the time prescribed by law (Article 57.1)

9. Right to association (Article 58)

Activity of associations the purpose of which is the forcible overthrow of legitimate state authority on the whole territory of the Republic of Azerbaijan or in any part thereof, as well as those having objectives which are considered a crime, or which use criminal methods are prohibited. Activity of associations which violate the Constitution and laws may be prohibited only by a court decision (Article 58.4)

10. Right to free enterprise (Article 59)

Everyone may, using freely his/her possibilities, abilities and property, engage individually or together with others in entrepreneurial activity or other kinds of economic activity not prohibited by the law (Article 59.1)

Only protection of state interests, human life and health is regulated by the state in entrepreneurial activity (Article 59.2)

11. Administrative and judicial guarantee of rights and freedoms (Article 60)

Everyone is guaranteed protection of his/her rights and liberties through the administrative remedies and in court.

Everyone has the right to an unbiased approach to their case and to consideration of the case within a reasonable time period in the administrative proceedings and court.

Everyone has the right to be heard in administrative proceedings and courts.

Everyone may appeal against the actions and inaction of state bodies, political parties, legal entities, municipalities and their officials in administrative manner or in courts.

12. Right to protection from arbitrariness and conscientious treatment (Article 68)

Everyone has the right to the conscientious treatment that excludes arbitrariness by state authorities.

The state, together with civil servants, shall bear civil liability for damage caused to human rights and freedoms and for the violation of their guarantees as a result of unlawful actions and inaction of public servants.

13. Guarantees of human and citizens' rights and freedoms (Article 71)

Restriction of rights and freedoms shall be proportional to the result expected by the state. (Article 71.2)

Everyone may perform actions not prohibited by law and no one may be forced to perform actions not prescribed by law. (Article 71.9)

State authorities may function only on the basis of the present Constitution, in the manner and within the boundaries prescribed by law. (Article 71.10)

Constitutional Court of the Republic of Azerbaijan shall be requested in advance to give its opinion with respect to the changes to the text of the Constitution that are proposed by the Milli Majlis or the President of the Republic of Azerbaijan. (Article 153 of the Constitution).

Constitutional Court of the Republic of Azerbaijan may not take decisions with respect to the changes in the text of the Constitution of the Republic of Azerbaijan that are adopted by referendum. (Article 154 of the Constitution).

Amendments to the Constitution shall be adopted in the Milli Majlis of the Republic of Azerbaijan by a majority of 95 votes in the form of Constitutional laws.

Constitutional laws of the Republic of Azerbaijan on amendments to the Constitution of the Republic of Azerbaijan are put to a vote in the Milli Majlis of the Republic of Azerbaijan twice. The second voting is held six months after the first voting.

Constitutional laws of the Republic of Azerbaijan on amendments to the Constitution of the Republic of Azerbaijan are submitted to the President of the Republic of Azerbaijan for signing in an order envisaged in the present Constitution for laws, both after the first and after the second voting.

Constitutional laws of the Republic of Azerbaijan on amendments to the Constitution of the Republic of Azerbaijan come into force upon the signing, after the second voting by the President of the Republic of Azerbaijan.

Constitutional Laws of the Republic of Azerbaijan are an integral part of the Constitution of the Republic of Azerbaijan and should not contradict the main text of the Constitution of the Republic of Azerbaijan. (Article 156).

Amendments to the Constitution of the Republic of Azerbaijan may be proposed by the President of the Republic of Azerbaijan or at least 63 Members of the Milli Majlis of the Republic of Azerbaijan. (Article 157).

No amendments to the Constitution may be proposed regarding the provisions contained in the Chapter I of the present Constitution. (Article 158).

I.IV The mutual relationship between different catalogues of human rights

The Constitutional Court, through its decisions, has formed important legal views, with due regard to the principle of supremacy and direct binding force of the Constitution, priority of the provisions of the international treaties to which the Republic of Azerbaijan is party and of human rights and freedoms. There are several references in regard to international treaties:

Decision "On conformity of Article 54.1 of the Housing Code of the Republic of Azerbaijan with Article 28.3, Article 43 and Article 71.2 of the Constitution of the Republic of Azerbaijan", dated April 14, 2000, has been adopted by the Constitutional Court of the Republic of Azerbaijan.

The decision noted that Article 28.3 of the Constitution of the Republic of Azerbaijan states that everyone lawfully within the territory of the Republic of Azerbaijan shall have the right to liberty of movement, freedom to choose his residence and leave the territory of the Republic of Azerbaijan. According to Article 43 of the Constitution of the Republic of Azerbaijan, establishing the right to housing, no one may be arbitrarily deprived of his place of residence. The state assists in construction of living premises, takes special measures for realization of right to housing. Similar provisions are also contained in Article 13 of the Universal Declaration of Human Rights, in addition to Article 2 § 1 of the Protocol 4 to the European Convention on Human Rights."

One may mention the following reference in the Decision of the Constitutional Court on verification of compliance, with the Constitution and laws of the Republic of Azerbaijan, of the judicial acts adopted following the complaints lodged by the Narimanov District Executive Authority: "Article 6 § 1 of the European Convention on Human Rights provides that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." The Constitutional Court adopted a relevant decision "On verification of conformity of some regulatory legal acts on the appeal of Mr. Clark Gordon Morris with the Constitution ", dated May 26, 2017.

The citizen of the United Kingdom of Great Britain and Northern Ireland Mr. Clark Gordon Morris appealed to the Constitutional Court and requested to verify the upholding of the judicial act temporarily restricting the right to leave the country and the measure of the restriction of the right to leave the country, as well as the conformity of the relevant regulatory legal acts with the Constitution and the provisions of Protocol 4 to the European Convention on Human Rights. This decision mentioned a number of international legal instruments. The decision stated that the Plenum of the Constitutional Court should take into account the provisions of international treaties to which the

Republic of Azerbaijan is a party, as well as relevant international bodies, when determining the content of rights and freedoms enshrined in paragraph II of Article 12 of the Constitution.

Among them, Article 12 of the International Covenant on Civil and Political Rights: according to the Article, everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. The decision also refers to General Comment No. 27 of 2 November 1999 of the UN Human Rights Committee on Article 12 of the International Covenant. Restrictions imposed on the rights provided for in that article should not undermine the principle of freedom of movement. To consider these restrictions to be reasonable, they should be envisaged by the law and should be necessary to achieve the objectives mentioned in Article 12.3 of the Covenant in the democratic society and should comply with all other rights set out in the Covenant. States should always be guided by the principle that these restrictions do not address the essence of the law under consideration when adopting laws that contain restrictions permitted by Article 12.3 of the Covenant. The restrictive measures should comply with the principle of proportionality; they should be suitable for the performance of defense functions; among all means which may lead to the desired results, they should be the least restrictive and should be proportionate to protected interests. The principle of proportionality should be followed not only in the legislation in which the relevant restriction is envisaged, but also in the administrative and judicial authorities within the framework of the application of that law.

Constitutional Court adopted the decision "On verification of conformity of the Decision of October 5, 2017 of the Civil Chamber of the Supreme Court of the Republic of Azerbaijan with the Constitution and laws of the Republic of Azerbaijan in connection with the complaint of Mr. Davud Bagirov", dated July 25, 2018. The same decision stated that in international law, the impartial and fair protection of human rights and freedoms by a court is defined as the human's inalienable right.

Thus, according to Article 8 of the Universal Declaration of Human Rights, Article 6 of the European Convention on Human Rights, Article 14 of the International Covenant on Civil and Political Rights, everyone has the right to consider any criminal charge against him, or in determining his rights and obligations in any civil process, to a fair and public hearing by a competent, independent and impartial court established by law. These provisions of the Constitution are also reflected in international legal instruments on the protection of human rights and freedoms. According to paragraph 4 of Article 23 of the International Covenant on Civil and Political Rights, States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Under Article 5 of Protocol 7 to the Convention, spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution.

In a number of decisions of the Constitutional Court, the criterion of clarity of legal norms was repeatedly mentioned. Thus, because of its legal position, the rule of law is clear, unambiguous and the principle of equality before the law and the court is based on the principle of equality, which can only be achieved through a common understanding and interpretation by all legal practitioners.

On the contrary, the ambiguity of the content of the law allows for unrestricted judicial decisions in the course of the implementation of laws and, of course, leads to arbitrary arbitrariness and violation of the principles of equality and the rule of law.

With regard to competition or hierarchy, it should be noted that conflict rules specify the rules that allow for the determination of the powers of the judiciary or law enforcement agencies in constitutional court cases. Article 151 of the Constitution states that the international treaties to which the Republic of Azerbaijan is a party have jurisdiction over the laws of the country. Consequently, they have equal preference for the constitutional laws of the court (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum).

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

Under Article 27 of the Constitution, everyone has the right to life. This article does not affect the right to life of every person, except for the killing of enemy soldiers during an armed attack on the State, the execution of the death penalty by court order and other cases defined by law.

As an exceptional measure, the death penalty may be imposed by law only for serious crimes against the State, human life and health, until it is completely abolished.

The use of weapons against the person, except in cases provided for by law, the protection, emergency protection, arrest and detention of the offender, the avoidance of arrest of a detainee, rebellion against the state or suppression of a coup, armed invasion of the country. It should be noted that qualitative indicators of the right to life are mentioned in other articles of the Constitution, such as Article 38 (Right to social security), Article 39 (Right to live in a healthy environment), Article 41 (Right to protection of health), Article 46 (Right to protect honor and dignity).

Article 31 of the Constitution of the Republic of Azerbaijan establishes the right to live in safety. Thus, everyone has the right to live in safety. Except cases prescribed by law it is prohibited to infringe upon a person's life, physical and mental health, property, living premises, and to commit acts of violence against him/her.

In addition to the Constitution, it is worth noting the international instruments ratified by the Republic of Azerbaijan, since these instruments are also an integral part of the national legal system. This right is enshrined in all core human rights conventions.

Among them: Article 3 of the Universal Declaration of Human Rights, everyone has the right to life, liberty and security of person. According to Article 6 of the International Covenant on Civil and Political Rights every human being has the inherent right to life.

This right shall be protected by law. No one shall be arbitrarily deprived of his life.

When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

According to Article 2 of the European Convention on Human Rights, everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Restrictions on this right are provided for in Articles 27.2, 27.3, 27.4 of the Constitution, everyone's right to life shall be inviolable, except in the event of killing of enemy soldiers during their armed attacks, in the case of execution of capital punishment pursuant to a court judgment that has become effective, and in other cases as prescribed by law.

Capital punishment, until it has been completely abolished, may be prescribed by law as an exclusive penalty only for particularly serious crimes against the state, or against the life and health of a human being. Weapons may not be used against a person except as prescribed by law in cases of self-defense, necessity, apprehension and arrest of criminals, preventing the escape from a place of detention, suppressing insurrection against the state or preventing coups d'état, or military aggression against the country.

The Constitutional Court of the Republic of Azerbaijan made certain references in the descriptive and substantive part of a number of decisions on the right to life. Thus, the decision of the Constitutional Court "On verification of compliance of Article 264 of the Criminal Code of the Republic of Azerbaijan with Article 66 of the Constitution of the Republic of Azerbaijan", dated January 29, 2004, states that the accident has caused serious or serious harm to the health or death of the victim. In determining the criminal liability of the driver of a vehicle, the State requires every driver to respect the rights and freedoms of another person, especially the right to life (Article 27 of the Constitution) and the right to a safe life (Article 31 of the Constitution).

Decision of the Constitutional Court "On interpretation of certain provisions of Article 239 of the Labour Code", dated July 15, 2011 states that everyone has a right to work in safe and healthy conditions, to receive reward for labor without discrimination not less than minimum wage set by the state. This right is related with the right to life and right to health protection stipulated on the Constitution.

Constitutional Court considers human rights and freedoms, including the right to life. This is why the Court relies more on principles and norms of international law than on other courts.

Furthermore, constitutional human rights standards are generally consistent with international conventions and, as they sometimes overlap in the true sense of the word, courts have interpreted and applied similar international conventions and standards to clarify the principles of human rights protection contained in national laws.

The response is the same as II.I

II.II Freedom of expression

Freedom of expression is an important human right, especially as it plays an important role in establishing democracy and realizing all other human rights. Article 47 of the Constitution of the Republic of Azerbaijan is devoted to freedom of expression. According to the article, everyone has freedom of thought and speech. No one shall be forced to proclaim or to repudiate his/her thoughts and beliefs. This right is also mentioned in Article 71 of the Constitution (protection of human and citizens' rights and freedoms) as follows: in no case may anybody be forced to reveal religion, conscience, ideas or beliefs and may not be prosecuted by law. This right is enshrined in international documents in which the Republic of Azerbaijan adheres to fundamental human rights and freedoms. Thus, paragraph I of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, states that another international instrument of the Republic of Azerbaijan is the International Covenant on Civil and Political Rights of 1966 (Article 19).

Paragraph III of Article 47 of the Constitution of the Republic of Azerbaijan establishes restrictions on freedom of expression: agitation and propaganda inciting racial, national, religious, social discord and animosity or relying on any other criteria is inadmissible.

Although it is not directly stated in the text of the Constitution, the Constitutional Law of December 24, 2012, adopted by the Milli Majlis, cited other cases of restrictions on freedom of expression and freedom of information intended to bring the implementation of human rights and freedoms in the Republic of Azerbaijan in conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms.

These are the following:

- state security interests;
- protection of health and morals, rights and freedoms of other persons;
- prevention of crime;
- prevention of disorder;
- protection of public safety;
- ensuring the interests of the territorial integrity of the state;
- protection of the reputation or rights of other persons;
- preventing the disclosure of confidential information;
- maintaining the authority and impartiality of the judiciary.

(Article 3.6 of the Constitutional Law “On Regulation of Implementation of Human Rights and Freedoms in the Republic of Azerbaijan”)

The purpose of “protection of the rights and dignity of other persons”, which is one of the bases of the Constitutional Law, is stated in several articles in the Constitution itself. Article 32 of the Constitution guarantees “right to the inviolability of private life”. The right to protect honour and dignity as defined in Article 46 of the Constitution is also a constitutional right. These rights constitute red lines of restrictions on freedom of expression, freedom of information, and media freedom.

There is no provision in the case-law of the Constitutional Court, directly relevant to Article 47 of the Constitution; however, its several decisions refer to this Article. Some of them are:

1. Decision “On Abolition of Free Transport Workers Union”, dated December 7, 2001 cited that the Constitutional Court notes that public associations are one of the key factors that contribute to the strengthening of democracy by encouraging the development of pluralism, freedom of expression and diversity in society.

2. Decision “On interpretation of Articles 21 and 23 of the Civil Code of the Republic of Azerbaijan”, dated May 31, 2002, the Constitutional Court noted that, in Article 10 of the European Convention on Human Rights inter alia states that everyone has the right to freedom of expression. Article 17 of the Convention states that nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

In its Judgment in *Lingens v. Austria* of 8 July 1986, the European Court interpreted the provisions of Article 10 of the European Convention on Human Rights. In its judgment the right to freedom of expression is recognized to be one of the important foundations of society and is the necessary precondition for its development.

3. Decision "On verification of conformity of Article 133.1 of the Civil Code of the Republic of Azerbaijan with the Constitution of the Republic of Azerbaijan", dated September 20, 2004, mentioned that, the Constitution of the Republic of Azerbaijan counts the right to association among main human and citizen rights and freedoms. In international legal acts this right is mentioned under the name of freedom of assembly and association. European Court of Human Rights assesses this freedom from the point of freedom of thought and expression. In the current European legal system this freedom is accepted as mainly a political and humanitarian right. Although this right is not absolute, its limitation is only permissible when explicitly defined by law, requisite for workings of a democratic society, possessing high public importance and is done commensurately to lawful purposes of such limitation.

The response is the same as II.I

II.III Right to privacy/right to respect for private life/right to private life

Article 32 of the Constitution of the Republic of Azerbaijan contains right to inviolability of private life:

Everyone has the right to the inviolability of private life.

Everyone has the right for confidentiality of his/her private and family life. Except in cases prescribed by law, interference with private or family life is prohibited. Everyone is entitled to protection against unlawful interference with his/her private or family life. Gaining, storing, using and spreading information about the person's private life without his/her consent is not permitted. The collection, storage, use and dissemination of information concerning a person's private life is not permitted without his consent.

Except in cases prescribed by law, no one may be followed, filmed, photographed, recorded, or subjected to any other similar actions without his knowledge or despite his disapproval.

The state guarantees everyone's right to confidentiality with respect to correspondence, telephone communications, post, telegraph messages and information sent by other communication means. This right might be restricted, as prescribed by law, in order to prevent crime or to determine the facts in the course of investigation of a criminal case.

Everyone may become familiar with the materials collected in regards to him/her except in cases prescribed by law. Everyone has a right to demand correction or (elimination) of the information collected in regard to him/her, which does not correspond to the truth or is incomplete or collected through violation of the provisions of law.

Except in the cases prescribed by law, it is prohibited to access information resources carried on the paper or in electronic form in order to obtain information on a third party.

Information technologies may not be used for disclosing information about private life, including beliefs, religion and ethnic identity except in the cases when the concerned person has openly expressed his/her consent or when the statistical data of anonymous nature is being processed without discrimination and in other cases prescribed by law.

Scope of the personal information, as well as the conditions of their processing, collection, passing, use and protection is prescribed by law.

The right to the inviolability of private life should be understood as the protection of personal security and liberty by the state, and should include the prevention and punishment of attacks on the following: life, health, honor, dignity, intellectual property, right to personal liberty, to efficiently dispose of his free time, to set a residence, to not be traced, to move freely.

This right is cited in various decisions of the Constitutional Court of the Republic of Azerbaijan. These decisions are as follows:

In its Decision "On interpretation of Article 157.5 of the Code of Criminal Procedure, dated 9 July 2010, the Constitutional Court stated, that the right to freedom of everyone and the right to the inviolability of private life is fixed also in the international acts devoted to the human rights and freedoms, including Article 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political rights and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In its Judgment the European Court of Human Rights in *Medvedyev and Others v. France* ([GC], no. 3394/03, §§76-80, 29 March 2010) stated that Article 5 of the Convention protects the right to liberty and security. This right is of the highest importance "in a democratic society" within the meaning of the Convention.

All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions to the right to liberty secured in paragraph 1 of Article 5 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision.

The Court further reiterates that where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law. In all cases it establishes the obligation to conform to the substantive and procedural rules of the laws concerned, but it also requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness.

In its decision "On interpretation of some provisions of Article 158.3, Articles 158.4 and 290.3 of the Code of the Criminal Procedure of the Republic of Azerbaijan", dated October 10, 2011, the Constitutional Court noted that, the right to freedom and inviolability is the fundamental natural right that belongs to everyone upon his/her birth. The limitation of these rights, without any legal basis or necessity, is unacceptable. Restrictions on the right to liberty and security of person are allowed only on the basis of legal grounds and, as a rule, by a court decision.

The legislator having defined a legal order and the bases of restriction of the right to freedom and security of person resolved collision which can arise between protection of values of the state important for society by means of justice and ensuring the right of everyone to freedom.

In this sense, first of all, it should be noted that the arrest applied in the form of a measure of restraint on the severity, on volume and gravity of deprivations, leads to restriction of the rights accused to freedom and the security of person, fixed in Articles 28 and 32 of the Constitution. Therefore, the bodies which are carrying out criminal trial, choosing a measure of restraint in the form of imprisonment, along with observance of

the process of law provided in the Criminal Procedure Code are also obliged to prove need of isolation of accused from society.

Moreover, Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention on Human Rights notes that the right to judicial proceedings in "reasonable time" is provided. According to Article 6 § 1 of the Convention "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

In decision "On interpretation of the provision of Article 21.3 of the Law "On Police" of the Republic of Azerbaijan regarding the terms of administrative detention", dated April 27, 2001, cited that, Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, freedom and security of person.

According to Article 9.1 of the International Covenant on Civil and Political Rights everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Second principle of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly resolution 43/173 of 9 December 1988 provides that: "...Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose."

The response is the same as II.I

II.IV Freedom of religion

Freedom of religion, belief and conscience is an integral part of universal human rights. All religions are treated equally with high freedom of conscience in our country.

One of the basic principles of multiculturalism and tolerance is freedom of conscience. In societies where these principles have been violated, neither democracy nor multiculturalism nor human rights can be talked about. Freedom of conscience is also closely related to people's religious beliefs.

Therefore, restrictions on freedom of conscience, is also regarded as a limitation of people's attitude to their religious beliefs.

Article 48 of the Constitution of the Republic of Azerbaijan is called freedom of conscience.

Here are noted as follows:

Everyone has the right to freedom of conscience.

Everyone has the right to freely determine his own approach to religion, to profess individually or together with others any religion or to profess no religion, and to express and disseminate his beliefs concerning his approach to religion.

Religious rituals may be freely performed if they do not disturb public order and are not contrary to public morals.

Religious faith and belief do not excuse violations of the law.

No one shall be forced to express (or demonstrate) his/her religious faith and belief, to perform religious rituals or participate in religious ceremonies.

Article 18 of the Constitution of the Republic of Azerbaijan is called "Religion and the state". Religion in the Republic of Azerbaijan is separate from the state. All religions

are equal before the law. The spread and propaganda of religions (religious movements) which humiliate human dignity and contradict the principles of humanism shall be prohibited.

In addition to the Constitution of the Republic of Azerbaijan, there is a Law of 20 August 2002 "On freedom of religious beliefs". Article 1 of the Law cited as follows: "Everyone has the right to profess individually or jointly with others any religion, to express and disseminate his opinions in connection with the attitude to religion. It is prohibited to put any obstacles to the expression by any person of his religion, his participation in worship, religious rites and ceremonies or the study of religion. Nobody can be forced to expression (demonstration) of his religion, performance of religious ceremonies or participation in them. Propaganda of religion and religious ways of life through the use of force or threat of force, as well as incitement to racial, ethnic, religious, social animosity and hostility are prohibited. The dissemination and promotion of religions (sects), humiliating human's dignity or contradicting the principles of humanity is not allowed.

Freedom of religion may be limited only in cases stipulated by law and necessary in a democratic society, in the interests of public safety, to ensure public order, health or morals protection, as well as protection of the rights and freedoms of others.

Foreigners and stateless persons are forbidden to engage in religious propaganda, except for religious leaders invited by religious center.

Parents or the persons replacing them may educate their children based on mutual consent, in accordance with their religious beliefs and relation to religion."

Exceptions from the abovementioned legislation also highlight the limitations of the law on freedom of conscience and the limits of this right.

International Conventions ratified by the Republic of Azerbaijan set norms on freedom of conscience. Thus, Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, entitled Freedom of thought, religion and conscience. Article 18 of the International Covenant on Civil and Political Rights deals with this right as well.

The Constitutional Court of the Republic of Azerbaijan adopted a relevant decision "On interpretation of the provision "consent of appropriate executive authority", provided for in Article 22.2 of the Law of the Republic of Azerbaijan "On freedom of religious beliefs", dated June 13, 2013. The decision noted that under Article 2.0.2 of the Law "On Administrative Proceedings", a letter or other official document adopted by an administrative authority with the purpose of settling or resolving a certain (specific) issue in the field of the general (public) law and giving rise to certain legal consequences for an individual or legal entity (persons) to whom it is addressed, shall be considered an administrative act. For any document regarded as an administrative act, in addition to the form, the content of the administrative act shall be provided. It also noted in the decision that, according to Article 22.2 of the Law "On freedom of religious beliefs", the religious associations, other legal entities and individuals that are not religious formations have the right, upon consent of appropriate authority of executive power, to produce, import and freely spread literature, things of cult designation and other informational materials of religious content.

Moreover, in the decision of the Constitutional Court, "On verification of conformity of certain provisions of the Law on Social security of children who have lost their parents and were deprived of parental care of the Republic of Azerbaijan with Article 25.1 of the Constitution on the complaint of Mr. Javidan Gafarov", dated January 25, 2017, with reference to the International Covenant on Economic, Social and Cultural Rights, stated, that "the States Parties to the present Covenant undertake to have

respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions”.

The response is the same as II.I

II.V Prohibition of discrimination

The Constitution of the Republic of Azerbaijan contains a number of provisions prohibiting discrimination.

According to Article 25 of the Constitution, everyone shall be equal before the law and the courts. Men and women possess equal rights and freedoms (paragraph II). According to international norms in paragraph III and IV of Article 25 noted that, the State shall guarantee the equality of rights and freedoms to everyone, irrespective of race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organizations or other public associations. Restrictions of rights and freedoms on the grounds of race, ethnicity, religion, language, sex, origin, beliefs, or political or social affiliation are prohibited.

According to paragraph IV of Article 25 of the Constitution everyone has the inviolable and integral rights and freedoms based on the aforementioned criteria. Under paragraph V of Article 25 of the Constitution everyone shall be guaranteed equal rights in any proceeding before state authorities and bearers of public authority that decide upon his/her rights and duties.

In 2016 the new Paragraph has also been added in this Article: “Persons with impaired health are entitled to all rights and carry all duties enshrined in this Constitution, except in cases when enjoyment of rights and performance of duties is impeded by their limited abilities” (Article 25.6).

Article 34 of the Constitution provides that rights and responsibilities of wife and husband are equal in family relations. In accordance with Article 69 of the Constitution “foreign citizens and stateless persons staying in the Republic of Azerbaijan may enjoy all rights and must fulfil all obligations like citizens of the Republic of Azerbaijan if not specified by legislation or an international treaty to which the Republic of Azerbaijan is a party. The rights and freedoms of foreign citizens and stateless persons permanently living or temporarily staying in the territory of the Republic of Azerbaijan may be restricted only in accordance with international legal standards and the laws of the Republic of Azerbaijan.”

Article 149 of the Constitution provides that normative legal acts are based on law and justice. Here, when speaking about the reliance to justice, it is understood as “equal treatment of equal interests” (Article 149.1). The same content is specified in Article 150 of the Constitution in relation to acts adopted by municipalities.

The purpose of the Law of the Republic of Azerbaijan “On Guarantees of Gender Equality”, dated October 10, 2006 is to eliminate all forms of discrimination on sex and to equate men and women with political, economic, social, cultural and other spheres of public life, ensuring gender equality by creating opportunities. This law defines “discrimination on sex - the sexual oppression, any distinction, exception or benefit limiting or denying equal enjoyment of the rights on the basis of sex” (Article 2.0.4).

Various legislative acts of the Republic of Azerbaijan contain norms of equality before the law. These are as follows:

1. Labour Code of the Republic of Azerbaijan (adopted February 1, 1999), Article 16. Non-discrimination in labour relations
2. Code of the Civil Procedure of the Republic of Azerbaijan (adopted December 28, 1999), Article 8. Equality before the law and the court
3. Code of the Criminal Procedure of the Republic of Azerbaijan (adopted July 14, 2000), Article 11. Equal rights before the law and the court.
4. Family Code of the Republic of Azerbaijan (adopted December 28, 1999), Article 6. Exercise of family rights and fulfillment of family obligations.
5. Migration Code of the Republic of Azerbaijan (adopted on July 2, 2013), Article 74. The rights of foreign citizens and stateless persons.

The Republic of Azerbaijan has acceded to many international conventions prohibiting discrimination. These Conventions are as follows:

Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950), International Covenant on Civil and Political Rights (December 16, 1966), International Covenant on Economic, Social and Cultural Rights (December 16, 1966), United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 9, 1975), United Nations Convention on the Elimination of All Forms of Racial Discrimination (January 4, 1969), United Nations Convention on the Elimination of All Forms of Discrimination against Women (December 18, 1979), United Nations Convention on the Rights of Persons with Disabilities (December 13, 2006), United Nations Convention on the Rights of the Child (November 20, 1989), United Nations Universal Declaration of Human Rights (December 10, 1948), European Commission Recommendation on the protection of the dignity of women and men at work, 92/131/EEC, (November 27, 1991), Declaration of the Council of the European Union on the implementation of the Commission Recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (December 19, 1991), Directive 79/7/EEC of the Council of the European Union on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing (December 19, 1978), Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation (November 27, 2000), Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (revised) (July 5, 2006), Directive 76/207/EEC of the Council of the European Union on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (February 9, 1976), Directive 2004/113/EC of the Council of the European Union on the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services (December 13, 2004); Directive 2000/43/EC of the Council of the European Union on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin (June 29, 2000).

Many decisions of the Constitutional Court of the Republic of Azerbaijan contain numerous references to the prohibition of discrimination and ensuring the right to equality. These are as follows:

1. Decision “On interpretation of Article 33.2 of the Law of the Republic of Azerbaijan “On Civil Service” from the point of the requirements of Article 2.3 of this Law”, dated June 5, 2018, noted that “one of the principles to be taken into account in definition of the rules on operation of the authorities, listed in Article 2.3 of the Law “On Civil Service”, and public service is the right to equality of civil servants without any discrimination on the ground of race, nationality, religion, language, gender, social origin, family, property and official status, place of residence, beliefs, membership in public associations”.

2. Decision “On interpretation of paragraph VII of Article 125 of the Constitution of the Republic of Azerbaijan in the context of the civil procedure legislation of the Republic of Azerbaijan”, dated March 18, 2019, mentioned that “in examination of civil and economic disputes, the courts must ensure administration of justice through compliance with the principles of adversarial proceedings and equality of arms and based on evidences and facts, as submitted by the parties, and substantiate their decisions only based on the parties’ arguments discussed upon adversarial principle, their observations and evidences obtained in accordance with the requirements of the Code of the Civil Procedure of the Republic of Azerbaijan, and establish the truth following from examination of these evidences”.

The response is the same as II.I

II.VI Right to liberty

In accordance with Article 28 of the Constitution of the Republic of Azerbaijan, “Right to liberty” is defined as one of the fundamental human rights and freedoms. Article 28 of the Constitution provides:

Everyone has the right to liberty.

Right to liberty may be restricted only in the order provided by law, in the form of arrest, detention or imprisonment.

Everyone lawfully within the territory of the Republic of Azerbaijan shall have the right to liberty of movement, freedom to choose his residence and leave the territory of the Republic of Azerbaijan.

Any citizen of the Republic of Azerbaijan has the right to freely return to his/her country whenever he/she so desires.

Relevant articles of international conventions to which the Republic of Azerbaijan is a party are entitled to liberty.

Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person.

Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms enshrines the right to liberty and security of person.

In the practice of the Constitutional Court of the Azerbaijan Republic there is no specific decision on the right to freedom, but references to the right to freedom are made in the content of various decisions.

These are as follows:

1. Decision “On interpretation of certain provisions of Articles 158.3, 158.4 and 290.3 of the Code of the Criminal Procedure of the Republic of Azerbaijan”, dated October 10, 2011, stated that according to Article 28 of the Constitution, everyone has the right to liberty. The right to liberty might be restricted only as specified by law, by way of detention, arrest or imprisonment. Recognition by the state of dignity of the person as social value provides inadmissibility of willful intervention in the right to liberty of everyone and creates conditions for a full development of the individual and also the democratic organization of society. In Article 1 of the Universal Declaration of Human Rights it is specified that all human beings are born free and equal in dignity and rights. The right of everyone to liberty and security of person is his basic natural right which belongs to him from his birth. Restriction of these rights without legal justification and necessity is unacceptable.

2. Decision “On interpretation of the provision of Article 21.3 of the Law of the Republic of Azerbaijan “On Police” regarding the terms of administrative detention”, dated April 27, 2001. Constitutional Court of the Republic of Azerbaijan notes that according to Article 28 of the Constitution of the Republic of Azerbaijan everyone has the right to liberty. The right to liberty might be restricted only as specified by law, by way of detention, arrest or imprisonment. The right to liberty takes a prior place among the fundamental human rights and in international law as well.

Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person.

No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Second principle of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988 provides that: “...arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.”

Right to liberty is accepted all around the world as one of the most substantial and fundamental human rights. According to the international legal norms, the Constitution of the Republic of Azerbaijan guarantees this right.

At the same time, constitutional and international legal norms do not exclude restriction of liberty in cases provided for in law. Cases and reasonable terms of any person’s immediate detention without Court’s (Judge’s) ruling are determined by legislation.

Article 21 of the Law of the Republic of Azerbaijan “On Police” binds the restriction of any person’s right to liberty by police for the term not exceeding 48 hours with the perpetration of a crime or an administrative delinquency.

Article 22.2 of the Law of the Republic of Azerbaijan “On Police” provides that in cases determined by Article 21.3 of this Law, the terms of restriction of the right to liberty in connection with the perpetration of an administrative delinquency are determined by the legislation of the Republic of Azerbaijan on administrative delinquencies and in connection with the perpetration of a crime – by the criminal procedure legislation of the Republic of Azerbaijan.

3. In its decision on interpretation of Article 157.5 of the Code of Criminal Procedure, dated 9 July 2010, the Constitutional Court stated, with reference to the judgment of the European Court of Human Rights in *Medvedyev and Others v. France* ([GC], no. 3394/03, §§76-80, 29 March 2010) that Article 5 of the Convention protects the right to liberty and security. This right is of the highest importance “in a democratic

society” within the meaning of the Convention. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in Article 5 § 1. The list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one, and only a narrow interpretation of those exceptions is consistent with the aim of that provision”. The Court further reiterated that “where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law. In all cases it establishes the obligation to conform to the substantive and procedural rules of the laws concerned, but it also requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness”. The European Court stressed that “where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic and/or international law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to avoid all risk of arbitrariness and to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequences which a given action may entail”.

The criminal procedure law, being based on requirements of the Constitution and international legal acts, has established the legal procedures governing criminal prosecution and defense of suspects or accused persons as provided for by criminal law (Article 1.1 of the Code of the Criminal Procedure).

According to the criminal procedure law the right to liberty may be restricted only in cases provided by law and in the form of arrest, detention on remand or imprisonment in accordance with the law (Article 14.1 of the Code of the Criminal Procedure).

4. Decision “On interpretation of Articles 28.2, 28.3, 29.3 of the Law of the Republic of Azerbaijan “On Psychiatric Assistance” and Articles 98.1, 99 of the Criminal Code of the Republic of Azerbaijan”, dated April 15, 2011.

Imprison of the person by the aim of physical treatment is the quite actual problems in the field of human and civil right and liberty. Thus, keep of human at psychiatry hospital by force or non-voluntarily and their treatment is one of the element of the problem of the degree of limiting the right of human that is necessary in the field of the law of Constitution. That’s way the superiority of the Constitution and international standards on human rights has to be directly take into consideration on the solution of this problem.

According to their nature, human rights are realized with different aspects. Negative directions exist at the legislation for the maintenance of personal and social right. For the maintenance of social rights, the “affirmative” responsibilities put forwards on the state. But any inter group rights are maintaining differently. By the aim of maintenance of the right to live in Azerbaijan or the right to live out of danger (not expose to torture), inalienability of this right in constitutional level are denoted and responsibility on the break of rights commented in other normative acts are implied. No norm on the limit of inalienability rights of individual exist in the legislation. In other case, the right to liberty defined by Article 28 of the Constitution could be limited on the base of the law.

The lengthen of the binding and non –voluntarily hospital are directly connected with the isolate from liberty. That’s way, only free doctor psychiatrists, that are professional and has the authority by the law could state with such presentations before courts. But even the reference of the doctor psychiatrist would not be the lead documents for

courts. In the case of suspect of injustice of such references, courts determine the implementation of repeated free examinations. It denoted in Article 323.7 of the Code of the Criminal Procedure that the court possesses the right to make a decision on the appointment of examination by its own initiative. By Article 331.3 of the Code of the Criminal Procedure it directly defines that the court has the right to appoint the repeated or additional examination by its own initiative. It means that courts could appoint the repeated and additional examinations in the case, it is not sure of the reference of doctor psychiatrist. So, the analyses of the international experiment on discussed problem denote that, type of the binding and non-voluntarily psychiatry aid observed by the limit of the liberty have to be elected by the legal bases (danger by person to himself and surroundings and other cases) and appointed by the decision of the court.

5. Decision "On verification of conformity of Article 448.5 of the Code of the Criminal Procedure of the Republic of Azerbaijan with the Constitution of the Republic of Azerbaijan ", dated September 16, 2014, in accordance with paragraph I of Article 24 and Article 28 of the Constitution, Article 4 of the Constitutional Law of the Republic of Azerbaijan "On Regulation of Implementation of human rights and freedoms in the Republic of Azerbaijan" essentially stated that the right to liberty belongs to everyone, including basic human rights, from the moment of birth is inalienable and reflects the most important social benefit.

The right to liberty ensures the prohibition of arbitrary interference with the individual's integrity, and creates the conditions for the comprehensive development of the individual and the democratic organization of society.

Restriction of the right to liberty may be applied with due respect to requirement of Article 28 of the Constitution and Article 4 of the Constitutional Law "On Regulation of Implementation of human rights and freedoms in the Republic of Azerbaijan", to the general principles of law and criteria of necessity and proportionality, and without any alteration of the substance of this right. Legislator, while defining the legal procedure of grounds for restriction of the right to liberty, resolves any collisions which might arise between the State's protection, through administration of justice, of the values significant for the public and the securing of the individual's right to liberty (Decision of the Plenum of the Constitutional Court "On Interpretation of several provisions of Article 158.3 and Articles 158.4 and 290.3 of the Code of Criminal Procedure", dated October 10, 2011).

One of the special features of the right to liberty is that the decision on arrest and detention of any person should be taken within the procedure of judicial control. This feature, which is defined as the constitutional right in Article 4.3 of the Constitutional Law "On Regulation of Implementation of human rights and freedoms in the Republic of Azerbaijan", is of significant importance. This right, while having independent character, may not be replaced by provision in the law of specific time-limits of the restriction of liberty or the individual's access to court in connection with arrest. Accordingly, from the point of the Article, there may be no restriction of the individual's right to liberty for long time without judicial control.

The response is the same as II.I